



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/160375

PRELIMINARY RECITALS

Pursuant to a petition filed September 03, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on October 09, 2014, at Waukesha, Wisconsin.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (DHS) correctly modified the Petitioner's request for physical therapy services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: OIG by letter

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Waukesha County.

2. On July 7, 2014, [REDACTED] Rehabilitation ([REDACTED]) submitted, on behalf of the Petitioner, a prior authorization request for 52, 90 minute sessions of physical therapy services over 26 weeks at a cost of \$6,552.00. (Exhibit 4, pg. 5)
3. The goals of the requested therapy are as follows:
 - a. Ambulate 75 feet from her room to the kitchen in PACER gait trainer independently
 - b. [REDACTED] will negotiate 24 stairs to walk to her playroom with Contact Guard Assist.
 - c. [REDACTED] will sit on the toilet with feet supported and hands on surface with Contact Guard Assist x 5 minutes.

(Exhibit 4, pg. 13)

4. On July 25, 2014, DHS sent the Petitioner and her parents a letter indicating that the request for physical therapy services was modified. (Exhibit 4, pgs. 46-49)
5. On July 25, 2014, DHS sent notice that the request for services was modified from 52 sessions to 26 sessions. (Exhibit 4, pgs. 50 and 51)
6. The Petitioner's parents, on her behalf, filed a request for fair hearing that was received by the Division of Hearings and Appeals on September 3, 2014. (Exhibit 1)
7. Petitioner is five years old and has been diagnosed with cerebral palsy, microcephaly, increased muscle tone and delayed motor skills. (Exhibit 4, pg. 9)
8. Petitioner receives special education services, which include physical therapy – two, 30 minute sessions per week for 34 weeks and occupational therapy – two, 30 minute sessions per week, for 34 weeks. (Exhibit 4, pg. 30)
9. The goals of Petitioner's Individualized Education Program include:
 - a. Increased endurance to hold her head up; she will hold her head up for a period of 5 to 8 minutes while participating in switch work or classroom activities when sitting fully supported in her Rifton chair.
 - b. Reaching to activate a switch toy with minimal assistance, when in supported sitting and using the lap tray for arm support, 3 of 5 trials.
 - c. Actively moving her hand away to release the switch activation when in supported sitting and using the lap tray for arm support, 2 of 5 trials.
 - d. Walking in a gait trainer for a distance of 50 feet in non-carpeted hallway with assist to advance the walker as needed.

(Exhibit 4, pg. 24)

10. Petitioner's parents also implement a home exercise program with direction from the private therapist. (Testimony of Petitioner's father)

DISCUSSION

The Department of Health Services sometimes requires prior authorization to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

“In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence that the requested level of therapy meets the approval criteria.

Prior authorization is required for physical therapy services in excess of 35 treatment days “per spell of illness.” Wis. Admin. Code §DHS 107.16(2)(b)

It is undisputed that Petitioner is a five year old child with cerebral palsy, who needs physical therapy to address delays in her physical development and increased muscle tone. It is further undisputed that Petitioner has benefitted from physical therapy, thus far. The issue in dispute is what level of treatment is medically necessary and appropriate. Petitioner's parent argues that the Petitioner needs both twice weekly, privately based physical therapy and twice weekly school based therapy; DHS argues that private therapy, once per week, in addition to twice weekly school based physical therapy is sufficient to meet the Petitioner's needs.

The preponderance of the credible evidence supports DHS's modification of the requested services.

First, Petitioner submitted a letter from Dr. Elizabeth [REDACTED] dated August 27, 2014, which indicates that twice weekly physical therapy is necessary to assess and reassess the Petitioner's gross and fine motor skill and to implement a plan of care. Dr. [REDACTED] did not prescribe four sessions of physical therapy a week. As such, it is appropriate to approve one weekly private session, to supplement the two weekly school-based sessions.

Second, between the end of July and the date of this hearing in early October, the Petitioner has been receiving only one weekly private physical therapy session. Petitioner's father indicated that he had not noticed an decline in Petitioner's abilities and that she was continuing to improve. This supports DHS's position that once weekly private therapy is sufficient to meet the Petitioner's needs.

Finally, there is some duplication of services / goals between school therapy and private therapy. Indeed, one goal of the requested private therapy is to walk in a gait trainer for 50 feet in an uncarpeted hallway and one of the goals of private therapy is to have Petitioner walk 75 feet in her gait trainer at home. Ultimately, both goals are to get the Petitioner to walk independently with an assistive device. In addition, one can't help but wonder whether the private therapy goal of having the Petitioner sit on a toilet with contact guard assistance isn't that different from the school-based therapy goal of having the Petitioner sit in a chair with assistance while activating or deactivating switches. One would assume the skills/muscles/strength needed to sit on a toilet are not that different than those used to sit in a chair.

This duplication of goals indicates that two, 90 minute, private physical therapy sessions, in addition to the two 30 minute physical therapy sessions provided at school, are not medically necessary, as defined by Wis. Adm. Code. §DHS 101.03(96m), above. Consequently, DHS correctly approved one, weekly, 90-minute, in-home, private physical therapy session.

Petitioner's parents should note, that if Petitioner's condition does start to regress or change, they can have [REDACTED] Rehabilitation submit a new prior authorization request seeking additional services.

CONCLUSIONS OF LAW

DHS correctly modified the Petitioner's request for physical therapy services.

THEREFORE, it is

ORDERED

The petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative

Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

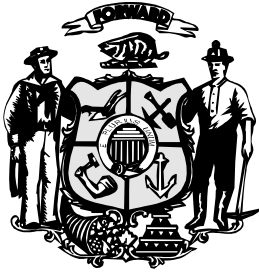
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 29th day of October, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 29, 2014.

Division of Health Care Access and Accountability